

REMARKS

Reconsideration and allowance of the application, as amended, is respectfully requested.

This amendment is in response to the Office Action dated May 3, 2005. Appreciation is expressed to the Examiner for the allowance of claims 3-9.

By the present amendment, non-elected claims 10-16 have been canceled, without prejudice to the applicants' right to proceed with these claims in Divisional application. Also, the title has been amended, and, accordingly, removal of the objection set forth in paragraph 5 to the title is respectfully requested. In addition, claim 5 has been amended to correct the minor informality noted in paragraph 6 of the Office Action, and, accordingly, removal of this objection is respectfully requested.

It is also noted that all of the claims have been amended to re-insert the claim term [100] which was inadvertently removed from all of the claims in the Preliminary Amendment.

Reconsideration and allowance of independent claims 1 and 2 over the cited references to Sato (USP 3,603,848) and Sayama (AU on the form PTO -1449). With regard to this, it is apparently recognized in the Office Action that neither Sato nor Sayama teach or suggest the claimed features concerning the compression and tensile strain defined in claims 1 and 2. However, the Office Action goes on state that these claimed relationships would be inherent for p-channel and n-channel FETs. More specifically, the Office Action states that it would be inherent for the compression strain formed for the crystal strain of channel portions in the p-channel field effect transistor would be greater than the crystal strain of crystal portions in the n-channel field effect transistors. Similarly, the Office Action states that it would be inherent for the tensile strain to be formed in which the crystal strain of the channel

portions of the n-channel FETs is greater than the crystal strain of channel portions of the p-channel FETs.

Applicants respectfully traverse this basis of rejection. With regard to this, applicants respectfully point out that when the direction of the channels for the p-channel and n-channel devices are the same, the strains for these two channels will be substantially the same. Therefore, the inherency stated in the Office Action is not actually the case. Accordingly, reconsideration and removal of this rejection based on inherency and allowance of claims 1 and 2 is respectfully requested.

With regard to this, reference is made to MPEP 2144.03 entitled Reliance on Common Knowledge in the Art or "Well-Known Prior Art." As noted in that section:

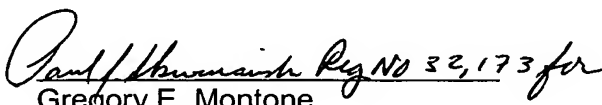
"It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principle evidence upon which a rejection was based."

In the present instance, what amounts to "common knowledge" with regard to the question of inherency of strain in the channel portions is being relied on as the principle evidence upon which a rejection is based. Therefore, if the Examiner maintains the position regarding the rejection of claims 1 and 2 based on inherency, it is respectfully requested that documentary evidence for establishing such inherency be provided.

If the Examiner believes that there are any other points which may be clarified or otherwise disposed of either by telephone discussion or by personal interview, the Examiner is invited to contact Applicants' undersigned attorney at the number indicated below.

To the extent necessary, Applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to the Antonelli, Terry, Stout & Kraus, LLP Deposit Account No. 01-2135 (Docket No. 501.42841X00) and credit any excess fees to such deposit account.

Respectfully submitted,
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